

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY JUNE 14, 2005

SENATE BILL

No. 109

Introduced by Senator Ortiz

(Coauthor: Assembly Member Jerome Horton)

January 20, 2005

An act to amend Sections ~~39153, 42400.4, and 42400.7~~ 42400.4 and 42400.7 of, and to add and repeal Chapter 3 (commencing with Section 39150) of Part 1 of Division 26 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as amended, Ortiz. Air pollution: minor violations: stationary sources: prosecution of violations.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources, subject to the powers and duties of the State Air Resources Board. Existing law subjects any person that violates any rule, regulation, permit, or order of the state board or a district pertaining to emissions of air contaminants or toxic air contaminants to fines, imprisonment, and civil penalties. ~~Existing law, until January 1, 2006, requires the state board and each district to adopt a regulation or a rule that classifies certain violations as minor.~~ Existing law provides that the recovery of a civil penalty for an air quality violation precludes criminal prosecution. Existing law also provides that the filing of a criminal complaint requires the dismissal of any civil action for the same offense, but exempts from that requirement any portion of a civil action requesting injunctive relief.

The bill would, until January 1, 2012, require the state board and each district to adopt a regulation or rule classifying certain violations as minor, and would require a representative of these agencies, who, in the course of conducting an inspection, detects a minor violation, to issue a notice to comply, as specified. The bill would prescribe related requirements and procedures.

Because the bill would make a false statement of compliance submitted under those procedures a crime pursuant to specified provisions, the bill would impose a state-mandated local program by creating a new crime. The bill would also impose a state-mandated local program by imposing new requirements upon the districts.

~~This bill would extend that minor violation classification requirement until January 1, 2012. The bill would allow a criminal prosecution for any of certain offenses, despite the recovery of civil penalties for the same offenses, as specified, and would allow a civil action for any of certain offenses to proceed, despite the filing of a criminal complaint for the same offenses. To the extent that this bill would increase the number of criminal or civil cases that would be prosecuted, it would impose a state-mandated local program.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 39153 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~39153. This chapter shall remain in effect only until January~~
4 ~~1, 2012, and as of that date is repealed, unless a later enacted~~
5 ~~statute, that is enacted on or before January 1, 2012, deletes or~~
6 ~~extends that date.~~

1 SECTION 1. Chapter 3 (commencing with Section 39150) is
2 added to Part 1 of Division 26 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 3. MINOR VIOLATIONS
6

7 39150. (a) The Legislature finds and declares that the
8 purpose of this chapter is to establish an enforcement policy for
9 violations of this division that the enforcement agency finds are
10 minor when the danger they pose to, or the potential that they
11 have for endangering, human health, safety, or welfare or the
12 environment are taken into account.

13 (b) It is the intent of the Legislature in enacting this chapter to
14 provide a more resource-efficient enforcement mechanism, faster
15 compliance times, and the creation of a productive and
16 cooperative working relationship between the state board, the
17 districts, and the regulated community while maintaining
18 protection of human health and safety and the environment.

19 (c) The state board and each district shall, for their respective
20 jurisdictions, implement this chapter by adopting a regulation or
21 a rule that classifies the types of violations of this division, or of
22 the regulations, rules, standards, orders, permit conditions, or
23 other requirements adopted pursuant to this division, that the
24 state board or the district finds are minor violations in
25 accordance with subdivision (d).

26 (d) In classifying the types of violations that are minor
27 violations, the state board or the district shall consider all of the
28 following factors:

29 (1) The magnitude of the violation.

30 (2) The scope of the violation.

31 (3) The severity of the violation.

32 (4) The degree to which a violation puts human health, safety,
33 or welfare or the environment into jeopardy.

34 (5) The degree to which a violation could contribute to the
35 failure to accomplish an important goal or program objective as
36 established by this division.

37 (6) The degree to which a violation may make it difficult to
38 determine if the violator is in compliance with other
39 requirements of this division.

1 (e) For purposes of this chapter, a minor violation of this
2 division shall not include any of the following:

3 (1) Any knowing, willful, or intentional violation of this
4 division.

5 (2) Any violation of this division that enables the violator to
6 benefit economically from noncompliance, either by realizing
7 reduced costs or by gaining a competitive advantage.

8 (3) Any violation that is a chronic violation or that is
9 committed by a recalcitrant violator.

10 (f) In determining whether a violation is chronic or a violator
11 is recalcitrant, for purposes of paragraph (3) of subdivision (e),
12 the state board or district or an authorized or designated officer
13 shall consider whether there is evidence indicating that the
14 violator has engaged in a pattern of neglect or disregard with
15 respect to the requirements of this division or the requirements
16 adopted pursuant to this division.

17 39151. For purposes of this chapter, “notice to comply”
18 means a written method of alleging a minor violation that is in
19 compliance with all of the following requirements:

20 (a) The notice to comply is written in the course of conducting
21 an inspection by an authorized representative of the state board
22 or district or an authorized or designated officer. If testing is
23 required by the state board or district or an authorized or
24 designated officer to determine compliance, and the testing
25 cannot be conducted during the course of the inspection, the
26 representative of the state board or the district or an authorized
27 or designated officer shall have a reasonable period of time to
28 conduct the required testing. If, after the test results are
29 available, the representative of the state board or district or an
30 authorized or designated officer determines that the issuance of a
31 notice to comply is warranted, the representative or officer shall
32 immediately notify the facility owner or operator in writing.

33 (b) A copy of the notice to comply is presented to a person
34 who is an owner, operator, employee, or representative of the
35 facility being inspected at the time that the notice to comply is
36 written. If offsite testing is required pursuant to subdivision (a), a
37 copy of the notice to comply may be mailed to the owner or
38 operator of the facility.

39 (c) The notice to comply clearly states the nature of the
40 alleged minor violation, a means by which compliance with the

1 *requirement cited by the state board's or district's representative*
2 *or an authorized or designated officer may be achieved, and a*
3 *time limit in which to comply, which shall not exceed 30 days.*

4 *(d) The notice to comply shall contain the information*
5 *specified in subdivision (h) of Section 39152 with regard to the*
6 *possible reinspection of the facility.*

7 *39152. (a) An authorized representative of the state board or*
8 *district or an authorized or designated officer, who, in the course*
9 *of conducting an inspection, detects a minor violation shall issue*
10 *a notice to comply before leaving the site at which the minor*
11 *violation is alleged to have occurred if the authorized*
12 *representative finds that a notice to comply is warranted.*

13 *(b) A person who receives a notice to comply pursuant to*
14 *subdivision (a) shall have the period specified in the notice to*
15 *comply from the date of receipt of the notice to comply in which*
16 *to achieve compliance with the requirement cited on the notice to*
17 *comply. Within five working days of achieving compliance, the*
18 *person who received the notice to comply shall sign the notice to*
19 *comply and return it to the state board's or district's*
20 *representative or an authorized or designated officer, stating that*
21 *the person has complied with the notice to comply. A false*
22 *statement that compliance has been achieved is a violation of this*
23 *division pursuant to Section 42400.2 or 42402.2.*

24 *(c) A single notice to comply shall be issued for all minor*
25 *violations cited during the same inspection and the notice to*
26 *comply shall separately list each cited minor violation and the*
27 *manner in which each minor violation may be brought into*
28 *compliance.*

29 *(d) A notice to comply shall not be issued for any minor*
30 *violation that is corrected immediately in the presence of the*
31 *inspector. Immediate compliance in that manner may be noted in*
32 *the inspection report, but the person shall not be subject to any*
33 *further action by the state board's or district's representative or*
34 *an authorized or designated officer.*

35 *(e) Except as otherwise provided in subdivision (g), a notice to*
36 *comply shall be the only means by which the state board's or*
37 *district's representative or an authorized or designated officer*
38 *shall cite a minor violation. The state board's or district's*
39 *representative or an authorized or designated officer shall not*
40 *take any other enforcement action specified in this division to*

1 *enforce the minor violation against a person who has received a*
2 *notice to comply if the person is in compliance with this section.*

3 *(f) If a person who receives a notice to comply pursuant to*
4 *subdivision (a) disagrees with one or more of the alleged*
5 *violations cited in the notice to comply, the person shall give*
6 *written notice of appeal to the state board or district, which shall*
7 *develop a process for reviewing and determining the disposition*
8 *of the appeal.*

9 *(g) Notwithstanding any other provision of this section, if a*
10 *person fails to comply with a notice to comply within the*
11 *prescribed period, or if the state board or district or an*
12 *authorized or designated officer determines that the*
13 *circumstances surrounding a particular minor violation warrant*
14 *immediate enforcement to prevent harm to the public health or*
15 *safety or to the environment, the state board or district or an*
16 *authorized or designated officer may take any needed*
17 *enforcement action authorized by this division.*

18 *(h) A notice to comply issued to a person pursuant to this*
19 *section shall contain a statement that the inspected facility may*
20 *be subject to reinspection at any time. Nothing in this section*
21 *shall be construed as preventing the reinspection of a facility to*
22 *ensure compliance or to ensure that minor violations cited in a*
23 *notice to comply have been corrected.*

24 *(i) Nothing in this section shall be construed as preventing the*
25 *state board or district or an authorized or designated officer, on*
26 *a case-by-case basis, from requiring a person subject to a notice*
27 *to comply to submit reasonable and necessary documentation to*
28 *support a claim of compliance by the person.*

29 *(j) Nothing in this section restricts the power of a city*
30 *attorney, district attorney, county counsel, or the Attorney*
31 *General to bring, in the name of the people of California, any*
32 *criminal proceeding otherwise authorized by law. Furthermore,*
33 *nothing in this section prevents the state board or district, or any*
34 *representative of the state board or district, from cooperating*
35 *with, or participating in, such a proceeding.*

36 *(k) Notwithstanding any other provision of this section, if the*
37 *state board or district or an authorized or designated officer*
38 *determines that the circumstances surrounding a particular*
39 *minor violation are such that the assessment of a civil penalty*
40 *pursuant to this division is warranted or required by federal law,*

1 *in addition to issuance of a notice to comply, the state board or*
2 *district or an authorized or designated officer shall assess a civil*
3 *penalty in accordance with this division, if the state board or*
4 *district or an authorized or designated officer makes written*
5 *findings that set forth the basis for the determination of the state*
6 *board or district.*

7 39153. *This chapter shall remain in effect only until January*
8 *1, 2012, and as of that date is repealed, unless a later enacted*
9 *statute, that is enacted on or before January 1, 2012, deletes or*
10 *extends that date.*

11 SEC. 2 Section 42400.4 of the Health and Safety Code is
12 amended to read:

13 42400.4. (a) In any district where a Title V permit program
14 has been fully approved by the federal Environmental Protection
15 Agency, any person who knowingly violates any federally
16 enforceable permit condition or any fee or filing requirement
17 applicable to a Title V source is guilty of a misdemeanor and is
18 subject to a fine of not more than ten thousand dollars (\$10,000).

19 (b) In any district in which a Title V permit program has been
20 fully approved by the federal Environmental Protection Agency,
21 any person who knowingly makes any false material statement,
22 representation, or certification in any form or in any notice or
23 report required of a Title V source of a federally enforceable
24 permit requirement, or who knowingly renders inaccurate any
25 monitoring device or method required of a Title V source, is
26 guilty of a misdemeanor and is subject to a fine of not more than
27 ten thousand dollars (\$10,000).

28 (c) Each day during any portion of which a violation of
29 subdivision (a) or (b) occurs is a separate offense.

30 (d) This section shall not become operative in a district until
31 the federal Environmental Protection Agency fully approves that
32 district's Title V permit program.

33 (e) This section applies only to violations described in
34 subdivisions (a) and (b) that are not otherwise subject to a fine of
35 ten thousand dollars (\$10,000) or more pursuant to Section
36 42400.1, 42400.2, or 42400.3.

37 SEC. 3. Section 42400.7 of the Health and Safety Code is
38 amended to read:

39 42400.7. (a) The recovery of civil penalties pursuant to
40 Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or

1 42402.4 precludes prosecution under Section 42400, 42400.1,
2 42400.2, subdivision (a) of Section 42400.3, subdivision (a) *or*
3 (b) of Section 42400.3.5, or *Section* 42400.4 for the same
4 offense. When a district refers a violation to a prosecuting
5 agency, the filing of a criminal complaint seeking penalties
6 pursuant to Section 42400, 42400.1, 42400.2, subdivision (a) of
7 Section 42400.3, subdivision (a) *or* (b) of Section 42400.3.5, or
8 Section 42400.4 is grounds requiring the dismissal of any civil
9 action brought pursuant to this article for the same offense.

10 (b) *The prohibition of criminal and civil penalties for the same*
11 *offense in subdivision (a) shall not apply to violations of*
12 *subdivision (b) of Section 42400.3.5 where the prosecutor*
13 *proves, beyond a reasonable doubt, that the defendant*
14 *knowingly, and with intent to deceive, made any false material*
15 *statement, representation, or certification in any form or in any*
16 *notice or report required by a rule or regulation adopted or a*
17 *permit issued for the control of toxic air contaminants pursuant*
18 *to Part 1 (commencing with Section 39000) to Part 4*
19 *(commencing with Section 41500), inclusive, and for which*
20 *delegation or approval of implementation and enforcement*
21 *authority has been obtained pursuant to subdivision (l) of Section*
22 *112 of the federal Clean Air Act (42 U.S.C. Sec. 7412(l)), or the*
23 *regulations adopted pursuant thereto, or where the prosecutor*
24 *proves, beyond a reasonable doubt, that the defendant*
25 *knowingly, and with intent to deceive, rendered inaccurate any*
26 *monitoring device required by that toxic air contaminant rule,*
27 *regulation, or permit.*

28 ~~(b)~~

29 (c) If the pending civil action described in subdivision (a)
30 includes a request for injunctive relief, that portion of the civil
31 action shall not be dismissed upon the filing of a criminal
32 complaint for the same offense.

33 SEC. 4. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution for
35 certain costs that may be incurred by a local agency or school
36 district because, in that regard, this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the
38 penalty for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

3 However, if the Commission on State Mandates determines
4 that this act contains other costs mandated by the state,
5 reimbursement to local agencies and school districts for those
6 costs shall be made pursuant to Part 7 (commencing with Section
7 17500) of Division 4 of Title 2 of the Government Code.

O